IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1023 of 1986

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 : NO

BAI SAVITA D/O KACHHIA S.

Versus

VASAVA NAGIN RATNABHAI

Appearance:

1. Civil Revision Application No. 1023 of 1986

MR JV DESAI for Petitioner No. 1-1/8

MR NALIN K THAKKER for Respondent No. 1,2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 10/10/2002

ORAL JUDGEMENT

This Revision Application arises from the judgment and order dated 15th October, 1985 passed by the learned Extra-Assistant Judge, Bharuch in Regular Civil

Appeal No. 105 of 1983. The petitioner before this Court is the Appellant-Plaintiff.

The suit premises is an open land admeasuring 16 ft. x 38 ft. bearing revised city survey nos. 4737 & 4738 situated at Nizam Vadi, Taluka-District : Bharuch. The said land has been leased to the defendants for a monthly rent of Rs. 2/=. The defendants have constructed their huts on the said land and have been residing in the said huts.

The plaintiff instituted Regular Civil Suit No. 44 of 1979 in the Court of Civil Judge [S.D], Bharuch for recovery of possession of the suit land on the grounds that the plaintiff required the suit land reasonably and bona fide for the purpose of raising a new construction over the suit land. The plaintiff averred that she had a large family. She required more residential accommodation for her family. She, therefore, required the suit land for the purpose of putting up construction. In support of her claim, she produced the construction plans approved by the local authority. The defendants contested the suit by filing written statement Exh. 11 and denied that the plaintiff required the suit land reasonably and bona fide for the purpose of raising new construction. The defendants claimed that the suit land was leased to the grandfather of the defendants some 50 years before; that the Rent Note Exh. 50 was caused to be signed by the defendants by misrepresentation; that the suit land is part of a large piece of land belonging to the plaintiff. The plaintiff had a large house existing on the said land. The plaintiff had also purchased another piece of land at Jhadeshwar. Thus, the defendants denied that the plaintiff had a reasonable and bona fide requirement of the suit land.

The learned trial Judge, under the judgment and order dated 24th January, 1983, found that the plaintiff was the owner of a large piece of land. The plaintiff had a house sufficiently large constructed over the said land; that there was sufficient open space available for further construction; that the plaintiff owned another piece of land also. The trial Court, therefore, decided the matter at issue against the plaintiff and dismissed the suit.

Feeling aggrieved, the plaintiff preferred Regular Civil Appeal No. 105 of 1983 in the Court of District Judge, Bharuch. The appeal was dismissed by the learned Extra Assistant Judge, Bharuch under the impugned judgment and order dated 15th October, 1985. Feeling

aggrieved, the plaintiff has preferred the present Revision Application under section 29 (2) of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 [hereinafter referred to as, "the Rent Act"].

Pending this Revision Application, the plaintiff-petitioner has died, her heirs and legal representatives have been substituted in her behalf. The plaintiff has assailed the impugned judgment and order of the Court below. It is submitted that the learned Judge has exercised the jurisdiction not vested in him. It is submitted that where the premises in question is an open land and the possession thereof has been claimed under section 13 (1)(i) of the Rent Act, the only question that is required to be examined by the Court is whether the plaintiff has sufficient fund for intended construction and that such construction has been permitted/approved by the local authority. It was beyond the jurisdiction of the Court to examine whether the suit land was required reasonably and bona fide or not.

I see no substance in the contention raised by the plaintiff. Section 13 (1)(i) of the Rent Act envisages a situation where the premises is land and such land is reasonably and bona fide required by the landlord for the erection of a new building. The expression 'reasonable and bona fide' included in the said clause (i) controls the word 'required' occurring in the said clause. Thus, mere requirement of the land by the landlord would not be sufficient to pass a decree for possession under the said clause. It is the duty of the Court to examine whether such requirement is reasonable and bona fide. There might be several factors which may go into consideration while examining the reasonable and bona fide requirement. In the present case, it has been proved before the Courts below that the plaintiff owns not only the suit land but also a large piece of land adjoining the suit land and another piece of land at Jhadeshwar, some four kilometers away from the suit land. Besides, the plaintiff has a large house in which she has been residing along with her family and also has open land available for further construction, if need be. In the above circumstances, it cannot be said that the Court below has erred in holding that the requirement of the suit land by the plaintiff is not reasonable and bona fide.

No other issue arises in the present Revision Application. The Revision Application is dismissed. Rule is discharged. The parties shall bear their own costs.

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[Ms. R.M Doshit, J.]

Prakash*